

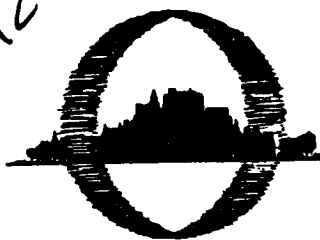
REQUEST FOR COUNCIL ACTION

MEETING
DATE: 2/3/03

123

AGENDA SECTION: PUBLIC HEARINGS	ORIGINATING DEPT: PLANNING	ITEM NO. E-5
ITEM DESCRIPTION: Amendment to the Zoning Ordinance and Land Development Manual – Section 65.510(5)(b) - Advertising signs		PREPARED BY: John Harford, Senior Planner
January 23, 2003		
<u>City Planning and Zoning Commission Recommendation:</u>		
<p>On December 11, 2002 the CP&ZC held a public hearing on a CPZC initiated text amendment to the section of the zoning ordinance addressing advertising sign credit use. The CP&ZC considered a staff recommended text change to Section 65.510(5)(b)(sign credit expiration) at the public hearing. The CPZC acted revised language on January 8, 2003.</p> <p>The current ordinance language states that "The sign credit must be used to erect a new conforming advertising sign within two years of the date of issuance or the credit will lapse". The Board of Appeals determined that the sentence should be applied differently than applied by the staff. The difference in the application has to do with the term "erect". Staff has attempted to apply the two year limit to the actual construction of the sign, whereas the alternative is to apply the time limit to the issuance of a sign permit. The CPZC determined that it would be prudent to clarify the language, especially the term "erect".</p> <p>The staff provided 3 alternatives for consideration by the CPZC and recommended a modification to the original interpretation. The CP&ZC recommended choosing the same alternative as proposed by the staff and listed in the staff report dated October 31, 2002. The CPZC also recommended a further refinement of the staff recommendation. The staff returned on January 8th with a revised recommendation as specified in the staff report dated December 13, 2002.</p> <p>The revised language states that:</p> <ol style="list-style-type: none">1. Sign credits shall expire in two years. There is no change to the current requirement;2. A sign permit application must include a sign credit. The sign permit must be approved prior to the expiration date of the sign credit;3. The last sentence of the section was added to clearly indicate that if a sign permit expires prior to construction, or a sign is not constructed, the sign credit also can expire. <p><u>Planning Department Recommendation:</u> See the attached staff reports dated October 31, 2002 and December 13, 2002.</p> <p><u>Council Action Needed:</u> The Council should pass a resolution adopting the recommended language as proposed in the December 13, 2002 staff report.</p>		
COUNCIL ACTION: Motion by: _____ Second by: _____ to: _____		

124

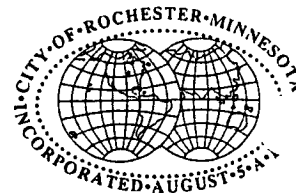
**ROCHESTER-OLMSTED PLANNING DEPARTMENT**

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**TO: CITY PLANNING AND ZONING COMMISSION****FROM: JOHN HARFORD, SENIOR PLANNER****DATE: OCTOBER 31, 2002**

RE: Text Amendment #02-06 initiated by the City Planning and Zoning Commission, to amend Section 65.510(5)(b) of the Rochester Zoning Ordinance and Land Development Manual. This section, Termination of Nonconforming Advertising Signs, covers the standards for use of advertising sign credits.

Applicant:

City Planning and Zoning Commission

Proposed Text Amendment:

The CPZC initiated a text amendment to Section 65.510 of the zoning ordinance that addresses advertising sign credits and the timing of redemption on October 9, 2002.

Land Use Plan:

The Land Use Plan does not specifically address this issue.

Zoning:

Currently, Section 65.510 provides the standards for determining the use of sign credits.

Referral Comments:

Those agencies responding had no comments.

Analysis:

The City's advertising sign provisions in the zoning ordinance address the removal of legal non-conforming advertising signs by sign owners in Section 65.510 "Termination of Nonconforming Signs". Section 65.510(5)(b) states that **"The sign credit must be used to erect a new conforming advertising sign within two years of the date of issuance or the credit will lapse."** The Planning Department has interpreted this sentence to mean that a sign company must submit a zoning certificate application with a sign credit such that the new sign is completely constructed prior to the expiration of the sign credit.

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This section along with the cap established to control the number of signs in the city is meant to, at the same time, encourage the removal of non-conforming advertising signs and to limit the numbers of signs being located in the community to minimize the impacts of advertising signs on neighborhoods.

This interpretation is supported in part by reviewing the 1997 text (pre-advertising sign amendment language approved in early 1998). The 1997 text states "For every advertising sign removed, the owner will be granted a sign credit. This credit must be used within two years of the date of issuance to erect a sign which conforms with the sign regulations or the credit will lapse". This language is less specific regarding the timing of the use than the 1998 amendment, thus indicating an intent to control the length of time that a sign company would have to use the credit.

The Board of Appeals earlier this year made decisions on two appeals of that interpretation by the Planning Department. The decision by the Board of Appeals did not provide a specific and permanent correction to the language in the ordinance. Therefore, the staff recommended that the CPZC initiate an amendment to this section.

The staff has identified three alternative ways to apply this provision.

1. Use a literal interpretation of the term "erect" such that the applicant must complete construct of a sign prior to the expiration date of the sign credit.
2. Develop language that would require the issuance of a zoning certificate prior to the expiration of the sign credit.
3. Develop language that would require merely the issuance of what is referred to as a "120 day letter" reserving a site for a sign per Section 60.509.

Option #1 is what the Council determined was most acceptable when the ordinance was amended in 1998. The intent apparently was to encourage sign companies to use the sign credit for the removal of a non-conforming advertising sign in a timely manner as opposed to obtaining the permit and then not constructing the sign but securing a property indefinitely. Secondly, the intent of the zoning ordinance is to see that non-conformities are removed over time within the city. Allowing for a sign credit is a compromise between the intent of removal of non-conforming advertising signs and providing land owners and sign companies a chance to locate a conforming site without exceeding the cap on total advertising signs in the city. Placing a time limit on the construction of a sign is a major drawback in that the Planning Department is not in a position to effectively check the timing of construction after a sign permit is issued. (See attached Appeal report) Enforcement of this provision becomes a problem as well. The Building Code does set an outer limit of 180 days for construction, but that provision is not generally enforced by the Building Safety Department.

Option #2 is consistent with our normal procedure on other permits. In other words, we do not look at when a structure is constructed. There is no time limit for use of a permit

124

under the zoning ordinance although there is a time limit of 180 days under the Building Code. However, the zoning ordinance does require that if there is an amendment to the zoning ordinance that addresses a standard that applies to an unused permit that the applicant must adhere to the new standard. (See Section 60.154) The drawback of this approach is that a sign company could tie up an area of the city for an indefinite period of time if the Building Code time limit is not enforced. This issue was of more concern to property owners than sign companies when the ordinance was amended in 1997-98.

Option #3 provides the widest latitude for the sign companies. However, the "120 day letter" is issued specifically because the proposed sign location does not meet all of the standards for obtaining a sign permit. The sign company must remove an existing sign and then apply for the permit. And as with a recent appeal the sign company could submit a request for a "120 day letter" and then take no further action or wait a long time to obtain the final sign permit. In the case of the one appeal it was nearly one year before the sign company was ready to submit the necessary material to obtain the sign permit. The staff recommends that Option #3 not be considered further.

If Option #1 is considered most reasonable than the text should be amended and placed as the first sentence in Section 65.510(5)(b).

"Sign credits shall expire 2 years from the date of issuance or the credit will lapse. The sign credit shall be submitted to the zoning administrator with a complete sign permit within 180 days prior to the expiration of the sign credit. The sign permit must be issued and the construction shall be completed prior to the expiration of the sign credit. Where a non-conforming sign must be removed prior to approval of a sign permit the application will be considered complete when the non-conforming sign is removed."

If Option #2 is considered more easily enforceable and the text should appear as follows as the first sentence in Section 65.510(5)(b):

"Sign credits shall expire 2 years from the date of issuance or the credit will lapse. A complete sign permit shall be submitted to the zoning administrator with and approved by the zoning administrator prior to the date of expiration of the sign credit. The complete sign permit shall be submitted at least 10 days prior to the expiration date of the sign permit."

Staff is of the opinion that Option #2 can more reasonably be administered.

Staff Recommendation:

Staff recommends that the CPZC and City Council amend Section 65.510(5)(b) with the language presented in Option #2.

Findings:

The criteria that need to be addressed for a text amendment include:

1. Whether there is a public need for the amendment.
2. Whether the amendment will accomplish one or more of the purposes of this ordinance, the Comprehensive Plan or other adopted plans or policies;
3. Whether adoption of the amendment will be lawful.

Findings could be as follows:

1. There is a need for the city to provide a clear set of standards and a process for the redemption of sign credits that can reasonably be applied by the zoning administrator.
2. The amendment will state specifically the requirements of the ordinance regarding the redemption of credits. The requirement for sign credit redemption will be clearly stated for administration of the ordinance. The process is similar to the process now in effect for other types of permits, that is time limits are normally based on when permits are approved rather than when a structure is completed.
3. The submittal process and time limits for redemption of sign credits is made clear, and the proposed change is considered reasonable and lawful. The text amendment was reviewed by the City Attorney.

Attachments:

1. RCA dated 6/4/01
2. Zoning Ordinance text – Sections 63.224 and 65.510

65.510

128

conforming must be restored within six months of the date of the need for restoration becomes apparent.

- 5) Any person or entity wishing to erect a new advertising sign that owns any legal nonconforming advertising signs must remove an equal or greater amount of legal nonconforming advertising sign area than the advertising sign area of the new advertising sign(s) to be erected.
 - a) Once the advertising sign owner has furnished proof of the total area of nonconforming advertising sign(s) removed and proof of removal of the supporting structure, the owner will be issued a sign credit. This sign credit must be furnished to the Zoning Administrator before a sign permit to erect the new advertising sign(s) will be issued. The sign permit shall allow the erection of a new advertising sign so long as the number of the cap set forth in Section 63.224 1) e) is not exceeded and the amount of area of the new advertising sign does not exceed the area of the nonconforming advertising sign which was removed.
 - b) The sign credit must be used to erect a new conforming advertising sign within two years of the date of issuance or the credit will lapse. If the sign credit lapses, the person or entity seeking to erect a new advertising sign must remove an additional equal or greater amount of legal nonconforming advertising sign area in order to erect a new advertising sign. In addition, if the sign credit lapses, the number of the cap set forth in Section 63.224 1) e) shall decrease by the number of lapsed credits. However, the period of time during which an interim ordinance on the erection of new advertising signs is in effect shall not be counted in determining whether a sign credit has lapsed.
 - c) This replacement requirement applies to all persons or entities that own legal nonconforming signs and wish to erect new advertising signs until the person or entity no longer owns any more legal nonconforming signs.
 - d) In addition, even if an advertising sign owner would otherwise qualify to erect a new advertising sign pursuant to this subdivision, the advertising sign owner may not erect the sign if doing so would cause the number of the cap on advertising signs as set forth in Section 63.224 1) e) to be exceeded.
 - e) Multiple sign credits may be used to obtain a single sign permit for the erection of a single advertising sign. The amount of the area of the new advertising sign may not exceed the area of the nonconforming advertising signs the removal of which resulted in the issuance of the sign credits. Furthermore, the number of the cap set forth in Section 63.224(1)(e) shall be reduced by the number of sign credits submitted to the zoning administrator, minus one, in order to obtain the single permit for the new advertising sign. (For example, the use of three sign credits to obtain one new sign permit will reduce the cap by two.)
- 6) If an advertising sign has been removed as a result of public purchase or condemnation initiated by the City of Rochester, then the sign owner will be entitled to either financial compensation or a sign credit, but not both alternatives. Where the City is not otherwise legally obligated to pay financial compensation, the City retains the right to designate whether the sign owner will receive financial compensation or a sign credit.

be used to guide the development of the site unless a revised plan is submitted and approved under this ordinance.

60.144 It is not intended by this ordinance to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulation, ordinances or permits previously adopted or issued pursuant to law. However, wherever this ordinance imposes greater restrictions, the provisions of this ordinance shall govern.

60.145 This zoning ordinance shall take effect and be enforced on January 1, 1992.

60.146 For all applications filed under the regulations of this ordinance, the burden shall be upon the applicant to provide the necessary information that will show that the proposed development will comply with the provisions of this ordinance and other applicable elements of the comprehensive plan.

60.147 All permits and certificates shall be processed under either a Type I, Type II, or Type III review procedure as these procedures are described in Article 60.500.

60.150 VESTING OF RIGHTS:

~~A permit or license issued in conflict with the provision of this ordinance shall be null and void and of no effect whatsoever.~~ Where a landowner has, in good faith and in reliance upon a permit issued in error, begun construction, the matter shall be referred to the Council for disposition.

60.151 Permits and certificates are valid only for the development specified therein. Conditions attached to an approved development permit are given the same force as if they appeared in the text of the Zoning Ordinance. A development permit is permanent in nature unless the approving body or this Ordinance limits its effective period. An approved permit or certificate is assignable, but an assignment does not discharge any assignee from any obligation owed any local governmental unit in connection with the development, unless the applicable unit of government consents to the discharge.

60.152 Applications for permits or certificates which may be affected by proposed amendments to this ordinance shall not be approved unless the zoning administrator is satisfied that the proposed development will meet the requirements of the existing ordinance as well as the proposed ordinance language.

60.153 Changes in the zoning ordinance that become effective after an application for a certificate or permit has been filed but before the certificate or permit has been issued apply to the pending application unless the amendment provides otherwise or it is determined that the former ordinance should be made applicable in a particular case in the interest of justice. The mere filing of an application for a zoning certificate, development permit, or variance confers no rights upon the applicant, petitioner, or appellant.

60.154 If this zoning ordinance is amended to prohibit or change the standards applicable to a development authorized by a certificate or permit, the permit becomes void by operation of the law on the effective date of the amendment, unless the ordinance establishing the amendment provides otherwise or the applicant, in good faith and in

130

reliance upon the permit, within ninety (90) days, began construction subsequent to the issuance of the permit but before adoption of the amendment.

60.160 INTERPRETATION OF THE ORDINANCE

60.161 Purpose: The provisions of this section are intended to establish guidelines to follow in clarifying ambiguities that may arise regarding the meaning of text in the Ordinance, the interpretation of the zoning map it incorporates, or the application of rules and regulations adopted pursuant to the Ordinance.

60.162 Authority: Subject to the requirements set forth in this section, the zoning administrator shall render interpretations to any provision of this ordinance or any rule or regulation issued pursuant to it.

60.163 Rounding of Numeral Requirements: The application of ordinance standards resulting in fractional requirements shall be treated in the following way:

Off-Street Parking Spaces: The requirement for a fractional space shall be rounded up to the next whole number, resulting in the provision of one full space.

Setbacks: No rounding of fractional requirements shall occur. When checking actual on-site measurements, the zoning administrator shall recognize the inherent difficulty in providing for an exact building location and shall permit minor deviations to occur as long as the spirit and intent of the ordinance is met.

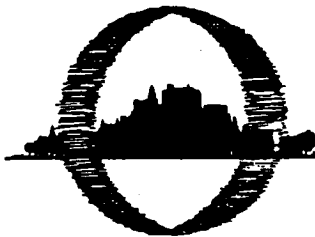
Density or Floor Area: Calculations resulting in a fractional unit may be rounded up to the next whole number.

Height: No rounding of fractional requirements shall occur. When checking actual on-site measurements, the zoning administrator shall recognize the inherent difficulties in establishing final grade lines during construction and shall permit minor deviations to occur as long as the spirit and intent of the ordinance is met.

Plant materials: Calculations resulting in provision of a fractional plant unit shall be rounded up to the next whole number.

60.164 Meaning of Words: All words and terms used in this ordinance have their commonly accepted, dictionary meaning unless they are specifically defined in this ordinance or the context in which they are used clearly indicates to the contrary. For the purpose of the ordinance, certain terms or words used herein shall be interpreted as follows:

- 1) All words used in the present tense include the future tense.
- 2) All words used in the singular number include the plural, and words in the plural number include the singular.
- 3) The masculine gender shall include the female and neuter.
- 4) The word "shall" is mandatory, and not discretionary, and the word "may" is permissive.
- 5) The word "building" shall include the word "structures".



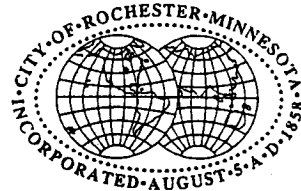
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TO: Rochester Zoning Board of Appeals

FROM: John Harford, Senior Planner

DATE: May 24, 2002

RE: Type III, Phase I Appeal #02-02, by Tri-State Outdoor Media Group, Inc. to the Zoning Administrator's Decision to deny an advertising sign zoning certificate for a property locate at 1724 S. Broadway. The appeal is to the application by the Zoning Administrator of Section 65.510 (5)(b) to the advertising sign zoning certificate.

Applicant/Owner:

Tri-State Outdoor Media Group
PO Box 6668
Rochester, MN 55903

Property Location:

1724 S. Broadway; Grimm property

Zoning:

B-4 (General Commercial) District

Referral Comments:

City Public Works has no comments on this application.

Report Attachments:

- 1) Application and related data
- 2) Appeal form
- 3) Letter to Tri-State dated April 24, 2002
- 4) Zoning Ordinance sections – 60.750, 65.510

Staff Analysis:

In mid July, 2001 Tri-State submitted an application for an advertising sign zoning certificate and a letter reserving 1724 S. Broadway for an advertising sign. The Planning Department responded on July 18th indicating that the application was not complete and must be amended. The application was determined to be incomplete as it failed to satisfy two ordinance requirements 1) the need to provide an accurate site plan, and an 2) amended site plan showing that the sign would meet the setback requirements. The



132

applicant did not submit a suitable site plan that would have been useable and therefore could not be amended at the time of application.

An additional requirement for approving Tri-State's application was that Tri-State owned another advertising sign located on the adjacent property to the south would have to be removed before the Planning Department could issue the zoning certificate for the new sign on the Grimm property. The sign on the adjacent property has yet to be removed.

In the same letter notifying Tri-State of the incomplete application the Planning Department stated that the site would be reserved for 120 days. The staff issued the 120 letter based on the requirements of Section 60.509. The letter should not have been issued until the applicant submitted a corrected site plan and met all other submittal requirements.

Two sign credits were submitted with the application, credits #21 and 23. Two credits were submitted because the sign size covered by the credits were 312 square feet and 288 square feet and the proposed sign was to be 600 square feet. The expiration dates were July 15, 2001 and November 1, 2002. Staff did not notify Tri-State that they had a sign credit expire on July 15, 2001. It was not until April of this year that staff looked at the sign credits at the time Tri-State submitted a complete final site plan. The discussions with Tri-State during the summer of 2001 focused on the site plan, setback requirements, and replacing the existing sign or placing the sign on an adjacent property owned by a different landowner.

In April, 2002 Tri-State submitted a revised site plan for a sign permit. Staff did not approve the permit. Tri-State was notified that credit #21 could not be accepted because it had expired on July 15, 2001. Staff indicated in the April 24th letter that Tri-State could submit a different sign credit.

The staff decision to deny the zoning certificate was based on the following factors:

1. an expired sign credit #21, and
2. an existing advertising sign had not been removed on the adjacent property immediately to the south.

Zoning Ordinance Requirements:

The zoning ordinance provides specific regulations covering the use of sign credits. Section 65.510(5)(b) states that

"The sign credit must be used to erect a new conforming advertising sign within two years of the date of issuance or the credit will lapse."

This section of the ordinance was part of the original 1992 ordinance and not a part of the 1997/98 amendment to the advertising sign provisions, and is the only section of the

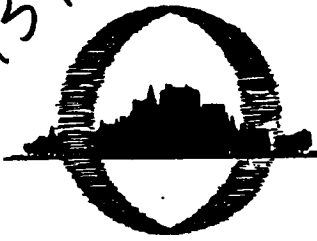
ordinance covering sign credit redemptions. The two year limit was intended to prevent sign companies from getting permits for locations and indefinitely tying up a site. There is otherwise no time limit on zoning certificates.

Board of Appeals Decision:

The Board of Appeals must determine if the staff has applied the appropriate ordinance provisions and applied them as prescribed by the ordinance. (Refer to Section 60.750 and 751 for decisions.)

Reviewed by _____
Date

134



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TO: CITY PLANNING AND ZONING COMMISSION

FROM: JOHN HARFORD

DATE: DECEMBER 13, 2002

RE: TEXT AMENDMENT #02-06 – AMENDING SECTION 65.510(5)(b)

At the public hearing on December 11, 2002 the CPZC requested that the staff prepare a revised version of the staff recommended amendment. The CPZC requested that the language include a statement about what happens if a credit expires, and specifically after a zoning certificate has been issued but the advertising sign not built during the certificate time period allowed by the zoning ordinance.

The staff recommended language from the 10/30/02 staff report as corrected during the meeting is:

“Sign credits shall expire 2 years from the date of issuance or the credit will lapse. A complete sign permit shall be submitted to the zoning administrator with and approved by the zoning administrator prior to the date of expiration of the sign credit. The complete sign permit shall be submitted at least 10 days prior to the expiration date of the sign credit.”

Section 61.131(2) of the zoning ordinance addresses the expiration of a sign permit. The subsection states that “a sign permit shall expire if the sign is not erected within 180 days after issuance and no permit fees or inspection fees for such sign shall be refunded”. This provision was not a part of 65.510(5)(b) and not in the initiated text amendment, and, in addition, does not need to be amended as it is clearly stated and applies to all sign types.

The staff recommended language can be amended to address the concern expressed by the CPZC about clearly stating what happens if a sign permit expires. The suggested change is as follows:

“Sign credits shall expire 2 years from the date of issuance. A complete sign permit shall be submitted to and approved by the zoning administrator prior to the date of expiration. ~~The complete sign permit shall be submitted at least 10 days prior to the expiration date of the sign credit.~~ (This requirement could be removed

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as this essentially shortens the allowable time by 10 days. However, the sign companies must realize the consequences of a late submittal. If they submit a sign permit that is wrong or incomplete and the sign credit expires the day they submit the application to the Planning Department the credit will expire and they will need to submit another credit.)

The remaining sentences of the current Section 65.510(5)(b) should be amended by replacing the word "lapses" with the word "expires" or "expired". This amendment will make the intent internally consistent with the suggested amendment above. The remaining portion of subsection (b) should remain unchanged. (See the attached copy of this section.)

To address the concern the CPZC expressed on December 11th the following sentences should be added as a separate paragraph to 65.510(5)(b).

"Where a sign permit has been issued for an advertising sign by the zoning administrator and the sign permit expires as specified in Section 61.131(2) the sign credit shall also have expired. No advertising sign may be erected following the expiration of the sign permit."

To restate, subsection 65.510(5)(b) is recommended to read as follows:

"Sign credits shall expire 2 years from the date of issuance. A complete sign permit shall be submitted to and approved by the zoning administrator prior to the date of expiration of the sign credit. If the sign credit expires, the person or entity seeking to erect a new advertising sign must remove an additional equal or greater amount of legal nonconforming advertising sign area in order to erect a new advertising sign. In addition, if the sign credit expires, the number of the cap set forth in Section 63.224 (1)(e) shall decrease by the number of expired credits. However, the period of time during which an interim ordinance on the erection of new advertising signs is in effect shall not be counted in determining whether a sign credit has expired.

"Where a sign permit has been issued for an advertising sign by the zoning administrator and the sign permit expires as specified in Section 61.131(2) the sign credit shall also have expired. No advertising sign may be erected following the expiration of the sign permit."

The motion carried 7-0, with Ms. Wiesner abstaining.

Ms. Petersson moved to recommend approval of General Development Plan #193 to be known as Rocky Creek Townhomes by the Kendal Group based on staff recommended findings, conditions, and with the applicant providing updated plans as discussed with the Park and Recreation Department to staff prior to the City Council meeting. Ms. Rivas seconded the motion. The motion carried 7-0, with Ms. Wiesner abstaining.

CONDITIONS:

1. Prior to Final Plat submittal, the applicant shall enter into a Development Agreement with the City that outlines the obligations of the applicant relating to, but not limited to, stormwater management, park dedication, traffic improvements, access control, pedestrian facilities, right-of-way dedication, access and extension of utilities for adjacent properties, and contributions for public infrastructure.
2. Grading & Drainage Plan approval is required prior to development. The proposed on-site storm water detention facility will serve less than 50 developable acres and will be private. Execution of an Ownership & Maintenance Agreement will be required for the proposed pond facility. A Storm Water Management fee will apply to any areas of this development that does not drain to an on-site facility, and are allowed to participate in the City's Storm Water Management Plan (SWMP).
3. Pedestrian facilities (5 foot wide sidewalk) shall be constructed along the entire frontage of this property abutting Rocky Creek Drive.
4. If the variance is not granted to the access spacing standards for the private roadway location to 26th Street NE the development shall be limited so that there is no more than 500 average daily trips using the private roadway access to Rocky Creek Drive NE.
5. Upon approval by the City Council for the Substantial Land Alteration, the applicant shall provide surety that guarantees the site will be fully restored after the completion of the excavation activity. Said surety must be provided prior to commencement of grading activities on the property. If the City Council denies the Substantial Land Alteration, the development layout shall be redesigned to accommodate grades where there is no change 10 feet or more.

Ms. Petersson moved to recommend approval of the substantial land alterations for the Kendall Group based on staff-recommended findings. Ms. Rivas seconded the motion. The motion carried 7-0, with Ms. Wiesner abstaining.

X Text Amendment #02-06 initiated by the City Planning and Zoning Commission, to amend Section 65.510(5)(b) of the Rochester Zoning Ordinance and Land Development Manual. This section, Termination of Nonconforming Advertising Signs, covers the standards for use of advertising sign credits.

Mr. John Harford presented the staff report, dated October 31, 2002, to the Commission. The staff report is on file at the Rochester-Olmsted Planning Department.

137

Mr. Harford explained that two appeals were made regarding the Rochester-Olmsted Planning Department denying two advertising permits. He explained that the Board of Appeals questioned the definition of "erect".

Mr. Harford explained that option number 2 listed in the staff report was the best option for the Rochester-Olmsted Planning Department. He explained that it gives clear direction to the Planning Department and sign companies.

Mr. Ohly asked how long a permit was good for.

Mr. Harford responded that the Building Code states 180 days. As a general rule, the Building and Safety Department does not enforce that provision. Under Section 61.131 of the Zoning Ordinance, subsection 2 states that sign permits expire 180 days from submittal date.

Mr. Ohly stated that he did not believe the language created was clear enough to state what will happen in a certain amount of days for sign companies.

Mr. Harford stated that it is spelled out in the Ordinance, but probably in a different section of the Ordinance. He stated that he could look into Section 61.131 to see what changes would need to be made.

Mr. Ohly stated that he wanted a sign company to know that they would lose a permit if they did not build in 180 days and their sign credit would expire. He explained the importance of it being stated very clearly in one section.

Ms. Wiesner clarified that the Building and Safety Department only requires that the applicant begin construction in 180 days (not completing the construction).

Mr. Harford stated that Section 61.131 states that a sign permit shall expire if the sign is not erected within 180 days. He stated that his viewpoint is that, if the pole were in the ground within 180 days, they would meet the Ordinance provisions.

Mr. Ohly asked what would happen if only the pole was in place two years later.

Ms. Wiesner responded that they would lose it at that point.

Mr. Ohly questioned if option two clearly stated that they would lose the sign at that point.

Mr. Harford responded that he would look at Section 61.131 more closely.

Mr. Harford explained that the two-year sign credit was different than a permit. He explained that a sign credit was developed as an incentive for sign companies to remove non-conforming signs.

Mr. Haeussinger stated that it was clear that the City Council wanted them to use the sign credit within two years. He stated that it is the sign company's responsibility to make sure that they use it in the time permitted.

Mr. Haeussinger stated that he believed the language in option one clearly spelled out what the company needs to do and what happens if they do not do it.

Mr. Harford explained the process of issuing a sign credit.

Mr. Harford stated that 44 sign credits have been issued. All but 17 have been redeemed.

Mr. Harford asked if the Commission would like him to work on more specific language.

Mr. Ohly responded yes.

Mr. Carl Heins, of 1817 5th Avenue SW, Rochester MN, addressed the Commission. He stated that he was an employee of Tri-State Outdoor. He stated that he spoke with Mr. Harford today regarding option two. He stated that option two would not affect Tri-State significantly. He stated that he did not believe that that a sign credit was a magical privilege, as they have to adhere to the Ordinance. He agrees that the Ordinance needs to be clear that companies will lose their sign credit if the sign was not constructed within two years.

Mr. Heins handed out a letter drafted to the Downtown Business Association and Chamber of Commerce to the Commissioners. He also handed out the response from the Chamber of Commerce. With the development of Highway 52, they will need to take down a number of signs. He asked that the City extend the life of credits that have to be taken down due to the Highway 52 project to put in the same area.

Mr. Staver responded that his request would have to be dealt through a separate issue and action.

Mr. Don Prow, of 516 17th Avenue SE, Rochester MN, addressed the Commission. He stated that he was the only locally owned company in Rochester. He stated that he was present when the Ordinance was revised with regard to signs. He explained that, when a sign credit is lost, it reduces the amount of signs in the community. He stated that, although the community is getting larger, the amount of signs is reducing. He explained the difficulty of finding another good location of the signs.

Mr. Prow stated that he would like more time to get new signs up when the Highway 52 project makes sign companies take signs down.

Mr. Prow requested that, if the same sign company is locating a new sign on the same property, they would be able to put a new pole in the ground before having to take the other out. He explained that it was easier to move the sign from one pole to another and is more cost effective.

Mr. Staver asked Mr. Harford if he could have draft language prepared by January 8, 2003 meeting.

Mr. Harford responded yes.

Ms. Petersson moved to continue Text Amendment #02-06 initiated by the City Planning and Zoning Commission to January 8, 2003. Mr. Haeussinger seconded the motion. The motion carried 8-0.

139

- a. It has been found in previous occasions that the road access location requirements need not be met. We have approved other projects not meeting this criteria.
- b. Having relatively flat terrain.
- c. Having good vehicular and pedestrian access, which has been presented at the meeting.
- d. The projected service area meets the criteria.
- e. This criterion meets to be met.

Mr. Haeussinger seconded the motion. The motion carried 7-1, with Ms. Rivas voting nay.

Mr. Burke moved to recommend approval of Zoning District Amendment #02-15 by Mark Leitzen based on the fact that all of the adjacent properties are currently zoned B-4. Ms. Petersson seconded the motion.

Mr. Staver stated that part of the rationale is that the zoning would be inconsistent with the land use plan amendment that was recently approved.

The motion carried 7-1, with Ms. Rivas voting nay.

Mr. Burke moved to recommend approval of General Development Plan #195 to be known as West River Parkway with the restrictions as presented by the applicant. Ms. Petersson seconded the motion. The motion carried 7-1, with Ms. Rivas voting nay.

* Text Amendment #02-06 initiated by the City Planning and Zoning Commission, to amend Section 65.510(5)(b) of the Rochester Zoning Ordinance and Land Development Manual. This section, Termination of Nonconforming Advertising Signs, covers the standards for use of advertising sign credits.

Mr. John Harford presented the staff report, dated December 13, 2002, to the Commission. The staff report is on file at the Rochester-Olmsted Planning Department.

Mr. Ohly agreed with the language.

Ms. Petersson stated that Mr. Prow mentioned Highway 52 and getting longer time limits on the sign credits.

Mr. Harford responded that the City Administrator's office and City Council are responding to that issue.

With no one else wishing to be heard, Mr. Staver closed the public hearing.

Mr. Haeussinger moved to recommend approval of Text Amendment #02-06 initiated by the City Planning and Zoning Commission as presented. Mr. Ohly seconded the motion. The motion carried 8-0.

031